

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

ROBERT LEE BAILEY, JR.,  
and BESSIE A. BAILEY,

Plaintiffs,

v.

CIVIL ACTION NO. 5:15-cv-03388

RINEHART TOWER SERVICE, INC.,  
and TYSON JAMES CARTER,

Defendants.

**SECOND AMENDED SCHEDULING ORDER**

The Court has reviewed the parties' *Joint Motion to Amend Scheduling Order* filed in the above-styled matter. For good cause shown, it is **ORDERED** that the motion (Document 31) is **GRANTED** and that the *First Amended Scheduling Order* (Document 10) previously entered on May 4, 2015, is **AMENDED** as follows:

Pursuant to Fed. R. Civ. P. 16(b) and L.R. Civ. P. 16.1(e), it is **ORDERED** that this case shall proceed as follows:

1. **Discovery**: The parties shall complete all discovery requests by **February 29, 2016**, and all depositions by **March 31, 2016**. The last date to complete depositions shall be the "discovery completion date" by which all discovery, including disclosures required by Fed. R. Civ. P. 26(a)(1), (2), and (5), but not disclosures required by Fed. R. Civ. P. 26(a)(3), shall be completed. Pursuant to L.R. Civ. P. 26.1(c), the Court adopts and approves the agreements of

the parties with respect to limitations on discovery (numbers of interrogatories, requests for admissions, and depositions). **(PLEASE NOTE THAT DISCLOSURES AFTER ESTABLISHED DEADLINES TO WHICH AN OBJECTION IS MADE WILL BE EXCLUDED FROM EVIDENCE UNLESS OPPOSING COUNSEL AGREED TO THE UNTIMELY DISCLOSURE OR THE COURT GRANTED AN EXTENSION OF THE DEADLINE.)**

2. **Summary Judgment and Other Dispositive Motions:** All dispositive motions, except those under Rule 12(b), together with depositions, admissions, documents, affidavits, or other such matter in support thereof, shall be filed and served by **April 29, 2016**. Any responses shall be filed and served within fourteen (14) days from the date of service of the motion, and any replies shall be filed and served within seven (7) days from the date of service of the response. Any motion must be supported by a memorandum of law at the time filed or submitted. If any motion, memorandum in support, response, or reply, inclusive of all attachments, exceeds fifty (50) pages in length, a hard copy of such materials shall be submitted to the presiding District Judge at the time of filing. **(PLEASE NOTE THAT ANY RESPONSE OR OTHER DOCUMENTS FILED AFTER THE DEADLINE FOR FILING, WITHOUT LEAVE OF COURT, WILL NOT BE CONSIDERED.)**

3. **Settlement Meeting:** The parties and their lead trial counsel shall meet and conduct negotiations looking toward the settlement of the action, and counsel shall be prepared at the Pretrial Conference to certify that they have done so. Counsel for the Plaintiff shall take the initiative in scheduling the settlement meeting, and all other counsel shall cooperate to effect such

negotiations. The Settlement Meeting may be held as early as desired, but must be held **at least forty-five (45) days prior** to the Pretrial Conference.

4. **Mediation:** Mediation is mandatory, and is ordered pursuant to, and shall be held in compliance with, the provisions of L.R. Civ. P. 16.6. The parties shall select the mediator in compliance with L.R. Civ. P. 16.6.2. Counsel for the Plaintiff shall take the initiative in scheduling the mediation, and all other counsel shall cooperate to effect the same. The mediation scheduled by the parties must be concluded **at least thirty (30) days prior** to the Pretrial Conference.

5. **Rule 26(a)(3) Disclosures:** If the case is not settled at the Settlement Meeting, at Mediation, or otherwise, and if there is no order or stipulation to the contrary, counsel and unrepresented parties shall make all Rule 26(a)(3) disclosures **at least thirty (30) days prior** to the Pretrial Conference.

6. **Motions in Limine:** All motions in limine shall be filed and served by **May 23, 2016**, with responses due by **May 30, 2016**. Replies shall not be filed, and will not be considered, without leave of the Court. **(PLEASE NOTE THAT ANY MOTION, RESPONSE OR OTHER DOCUMENTS FILED AFTER THE DEADLINE FOR FILING, WITHOUT LEAVE OF COURT, WILL NOT BE CONSIDERED.)**

7. **Proposed Integrated Pretrial Order:** The Plaintiff's portion of the proposed integrated pretrial order shall be submitted to opposing counsel by **June 14, 2016**, who shall then prepare and complete the opposing portion thereof and submit the proposed integrated pretrial order, signed by all counsel, to the Court for entry no later than **June 21, 2016**. The proposed

integrated pretrial order, signed by all counsel and unrepresented parties, shall set forth the matters listed in L.R. Civ. P. 16.7(b).

8. **Pretrial Conference:** A Pretrial Conference shall be held on **June 30, 2016, at 1:30 p.m.**, at which lead trial counsel shall appear fully prepared to discuss all aspects of the case.

9. **Proposed Charges to the Jury:** The original and one copy of proposed jury instructions, numbered and in charge form, on substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, and special interrogatories, if any be appropriate to the case, requested by counsel for submission to the jury, together with a verdict form, shall be exchanged by counsel and submitted to the presiding District Judge by **July 11, 2016**. On that same date, the proposed jury instructions and verdict form shall also be submitted to the presiding District Judge on compact disc saved in Word or WordPerfect compatible format or emailed to chambers according to instructions provided by the Court's law clerk. Again, instructions or interrogatories should be case specific only. **No procedural or general instructions should be submitted.**

10. **Final Settlement Conference:** A Final Settlement Conference, attended by all unrepresented parties and by lead trial counsel for each represented party, shall be held on **July 14, 2016, at 1:30 p.m.**, or as earlier directed by the Court. Individuals with full authority to settle the case for each party shall be present in person.

11. **Jury Trial:** Trial of this action shall be held on **July 18, 2016, at 9:00 a.m.**, before the undersigned. Counsel should be prepared to select a jury **on the preceding Friday** if so ordered by the Court.

12. **Stipulations:** All stipulations regarding extensions of time to file pleadings and any other stipulations which might affect deadlines contained in this order are subject to Court approval.

13. **Failure to Appear or Negotiate:** Should lead trial counsel fail to appear at any pre-trial conference or otherwise fail to meet and confer in good faith with opposing counsel as required in the "Settlement Meeting" paragraph above, or should a party or his authorized representative fail to appear or be available at any conference or otherwise fail to meet and confer in good faith as required in the "Settlement Meeting" paragraph above, appropriate sanctions may be imposed, including, but not limited to, sanctions by way of imposition of attorney fees against the attorney and/or his client pursuant to Fed. R. Civ. P. 16(f).

All proceedings shall be held by the Court at the Robert C. Byrd United States Courthouse and Federal Building, 110 North Heber Street, Beckley, West Virginia.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: October 19, 2015



IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA